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September 18, 2018

CONFIDENTIAL

Via Email

Jeff Jordan, Assistant General Counsel, CELA
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 7441

Dear Mr. Jordan:

This letter is on behalf of Defending Main Street SuperPAC Inc., and Sarah Chamberlain in her official capacity as Treasurer (collectively referred to as "Defending Main Street SuperPAC") in response to the complaint filed in the above-captioned matter by John H. Eichelberger, Jr. regarding the use of a vendor, Red Maverick Media ("RMM"), that also provided services to a candidate committee, Dr. John Joyce for Congress. The Commission should dismiss this complaint outright because there were no factual allegations set forth in the complaint purporting to demonstrate that there was illegal coordination between the candidate committee and Defending Main Street SuperPAC. Furthermore, RMM was utilizing its written firewall policy applicable to the safe harbor provision at 11 C.F.R. § 109.21(h), in order to ensure compliance with the law.

Discussion

The "conduct standard" of demonstrating coordinated communications,¹ is not met if there is a written firewall policy consistent with the requirements set forth in 11 C.F.R. § 109.21(h):

- (1) The firewall must be designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee; and
- (2) The firewall must be described in a written policy that is distributed to all relevant employees, consultants, and clients affected by the policy.

¹ 11 C.F.R. § 109.21(d)(4)

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As stated in the affidavit originally prepared in response to MUR 7403 (**Attachment 1**) of RMM's President, Ray Zoborney, RMM had in place a written "Common Vendor Coordination Firewall Policy" in compliance with 11 C.F.R. § 109.21(h) that was distributed to all personnel and contractors and was the basis of personnel training. Mr. Zoborney further states that this firewall policy was adhered to at all times in relation to the representations that are the subject of this complaint. Mr. Zoborney also describes in detail how the policy was effected. For example, Mr. Zoborney states: "Separate staff was assigned to each client and they were instructed not to communicate or share information between these clients, pursuant to the Policy. RMM's IT consultant created two separate server pathways that could only be accessed by identified members of each team. All art files, data files and invoicing information for each client were kept on these separate server areas to which only assigned team members had access."

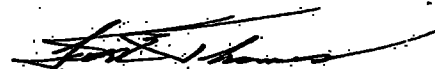
While the foregoing analysis rebuts the only assertion in the complaint (the "common vendor" claim), we feel obliged to include an affidavit (**Attachment 2**) of Sarah Chamberlain affirmatively stating that no request, suggestion, or consent from the candidate's campaign was behind the independent expenditures by Defending Main Street SuperPAC. This affidavit was also originally prepared in response to MUR 7403.

Through the process of responding to this complaint, Defending Main Street SuperPAC realized that it inadvertently incorrectly reported the federal candidate opposed by one of its independent expenditures. Its June 2018 FEC monthly report has been amended to reflect that a \$22,400 payment to Red Maverick Media on May 2, 2018 was in opposition to John Eichelberger, rather than Art Halvorson (see <http://docquery.fec.gov/cgi-bin/forms/C00540203/1261602/> for the amended report).

Conclusion

In summary, the complainant has provided no basis whatsoever for the Commission to make a finding of "reason to believe" against Defending Main Street SuperPAC. Due to that, and to the fact that RMM has demonstrated its utilization of a written firewall policy to ensure compliance with the law, the Commission should dismiss this matter.

Respectfully submitted,



Scott E. Thomas
(202) 420-2601, SThomas@blankrome.com



Jennifer Carrier
(202) 420-3034, JCarrier@blankrome.com

MUR 7441 Response
Defending Main Street SuperPAC Inc.

Attachment 1

16044463723

**FEDERAL ELECTION COMMISSION
MUR 7043**

AFFIDAVIT OF RAYMOND ZABORNEY

Comes the Affiant, Raymond Zaborney, and after have first been duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit.
2. I am President of Red Maverick Media ("RMM"). RMM provides political consulting, strategy and media services to candidates, political parties and advocacy groups across the country. It has a staff of approximately 22 persons at all times relevant to the events described in the Complaint.
3. Red Maverick Media has adopted and implemented a written Common Vendor Coordination Firewall Policy pursuant to and compliant with 11 CFR 109.21(h). The current revision of the Policy was adopted August 10, 2016 and consists of 5 pages (eight including appendices).
4. This Policy is "adopted and implemented to comply with 11.CFR 109.21(h) by prohibiting the flow of information between those providing services for the person paying for the communication and those currently or previously providing services to the candidate or a political party committee."
5. The Policy is implemented, *inter alia*, (1) by distribution to all employees, officers and directors of RMM, and to all clients, contractors and consultants of RMM, (2) by mandatory compliance training designed and presented by counsel (D. Eric Lycan of Dinsmore & Shohl, LLP) for all employees and staff on at least an annual basis, the most recent of which occurred on April 17, 2018, and (3) by a designated Compliance Officer who is responsible for evaluating each potential client engagement and implementing specific procedures outlined in the Policy to ensure compliance.
6. On April 27, 2018, RMM was asked to perform services for Defending Main Street SuperPAC, Inc. ("DMS"), in Pennsylvania's 13th congressional district. Because RMM was engaged at the time by a candidate for Congress in that District, Dr. John Joyce For Congress, RMM applied the Policy to these clients.
7. Separate staff was assigned to each client and they were instructed not to communicate or share information between these clients, pursuant to the Policy. RMM's IT consultant created two separate server pathways that could only be accessed by identified members of each team. All art files, data files and invoicing information for each client were kept on these separate server areas to which only assigned team members had access.
8. A Graphic Design consultant and a print and mail fulfillment vendor were thereafter selected to produce work for DMS. The Policy was provided to each and they were instructed how to abide by its provisions, including to include only specific staff on correspondence and proofs.


9. The Policy was adhered to at all times. No information about the campaign plans, projects, activities or needs of Dr. John Joyce for Congress, or information previously used by the RMM in serving Dr. John Joyce for Congress, was shared with DMS or any RMM employee, contractor or vendor providing services to DMS, that was in any way material to the creation, production or distribution of any communication.

Further, Affiant sayeth naught.


Raymond Zaborney

Commonwealth of Pennsylvania
County of Dauphin

Signed and sworn to before me on 27th June 2018 by Ray Zaborney


Signature of Notarial Officer

Title of office

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

SHEILA REED FLICKINGER, Notary Public

expiringburg City, Dauphin County

My Commission Expires May 31, 2010

My commission

MUR 7441 Response

Defending Main Street SuperPAC Inc.

Attachment 2

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Defending Main Street SuperPAC

June 25, 2018

Declaration of Sarah Chamberlain

1. I am Treasurer of Defending Main Street SuperPAC Inc. (DMSS). I was responsible for handling the making of the independent expenditures of DMSS in connection with the PA-13th Republican primary held on May 15, 2018.

2. I was responsible for retaining Red Maverick Media to handle the preparation and distribution of the messaging involved. I gave clear instructions to Red Maverick Media to assure that its work stayed within applicable FEC guidelines on independent expenditures.

3. Neither I nor anyone else responsible for DMSS spending acted based on any request, suggestion, or consent coming from any representative or agent of the campaign of Dr. John Joyce.


Signature


Date